auxiliary way unless the witness could not otherwise remember the transaction. *People v. McLoughlin,* 150 N. Y. 365.

EVIDENCE—IMPEACHING WITNESS—PREVIOUS STATEMENTS—REFRESHING MEMORY.—PEOPLE V. CREEKS, 75 PAC. 101 (CAL.).—In a murder trial, the State called as a witness the mother of the accused. Her testimony at the inquest had been material toward showing the prisoner's guilt. To the surprise of the State, she now failed to repeat that testimony, alleging that doubts of its truth had arisen in her mind. *Held,* that as she had not made statements to the damage of the State at the trial, but had merely failed to aid in the proof, she could not be made to testify as to what her former evidence had been. Van Dyke, J., *dissenting.*

Such proceedings would be an attempt to substitute former for present testimony. *Comm. v. Phelps,* 11 Gray 73. Of themselves, former inconsistent statements of a witness are irrelevant to the question of guilty or not guilty, though they tend to impeach his credit. A witness cannot be questioned in regard to such statements, by the party who called him, though he swore to them before the grand jury. *People v. Safford,* 5 Denio 112,—a case parallel to the present case, save that no bias of witness appeared. A witness, —whichever party calls him—cannot be impeached unless he has given testimony against the impeaching party. *People v. Mitchell,* 94 Cal. 550. The right of counsel to refresh the memory of a witness in no way depends on the surprise which his testimony may have created, and a witness who has omitted details should not be asked whether he had not testified to the omitted details before the committing magistrate or grand jury. *Putnam v. U. S.,* 162 U. S. 697, 705.

DEED OPERATING AS A MORTGAGE—OPTION TO PURCHASE.—REICH V. DYER ET AL., 86 N. Y. SUPP. 544.—Plaintiff being indebted to the defendant, executed a deed of property giving the latter an option to purchase at a price fixed in the deed within a year. *Held,* that such a deed was in fact a mortgage. Laughlin, J., *dissenting.*

The dissenting opinion is the more reasonable one. From the facts, which are not clear, it seems that the parties intended an absolute deed to be made to defendant's testatrix, on condition that within a year she accept the property at an agreed price. Upon failure to purchase, defendant's testatrix was to become mortgagee. They could not have intended the transaction to operate as a mortgage, because if it operated as such, it could never become an absolute conveyance. "Once a mortgage always a mortgage," 1 *Jones on Mort.,* par. 7; *Bisp. on Eq.,* sec. 153. Every conveyance of land accompanied by a conditional agreement is not necessarily a mortgage. *Baker v. Thrasher,* 4 Denio 493; *Macaulay v. Porter,* 71 N. Y. 173. The intention of the parties should govern. *Hughes v. Shaff,* 19 Ia. 335; *Foley v. Kirk,* 33 N. J. Eq. 170. The defendant's testatrix impliedly accepted the option to purchase at the end of the year, on the ground of estoppel by conduct. *Wash. on Real Prop.,* sec. 1914; *Bigelow on Estoppel,* 454.

HOMICIDE—SELF-DEFENSE—NECESSITY OF RETREAT.—STATE V. CASTLE, 46 S. E. 1 (N. C.).—Where it appeared that the accused, who was the foreman of a lumber camp, shot two of the hands during a difficulty commenced by